IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5358 OF 2006

Holya Lasha Mahale
& Anr. .. Petitioners.

vs.

Raghunath Holya Mahale. . .. Respondent.

Mr. P.N. Joshi i/by K.S. Patil and R.M. Haridas
for petitioners.
Mr. A.H. Palekar for respondent.

CORAM : A.P. DESHPANDE, J.

DATE : 8th November, 2006.

P.C.

. The respondent who is son of the petitioner instituted a suit for partition of land admeasuring 1 hectare 43 Aars. The petitioner remained absence and hence an ex-parte decree came to be passed on 23.10.2002. The ex-parte judgment and decree passed by the trial Court was challenged by filing the First Appeal and as there was a delay, an application for condonation of delay of 529 days was also filed. Another application claiming stay of the execution of the decree for possession was also filed. The stay application came to be rejected by

the First Appellate Court and the application for condonation of delay was kept pending.

2. Aggrieved by the rejection of the application for stay, the petitioner filed a writ petition in this Court bearing No. 5932 of 2004. This Court stayed the decree for possession and also directed the First Appellate Court to decide the application for condonation of delay. The First Appellate Court decided the application for condonation of delay moved by the petitioner and proceeded to reject the same by an order dated 16.7.2005. The Court found that the delay in filing of the appeal was not properly explained. Aggrieved by the order dated 16.7.2005, the petitioner filed a writ petition in this Court bearing No. 5334 of 2005. This Court was of the view that in the peculiar facts of the present case the First Appellate Court ought to have recorded evidence before deciding the application for condonation of delay and, therefore, proceeded to set aside the order passed by the IIIrd Ad-hoc Addl. District Judge, Malegaon dated 16.7.2005 and issued direction for recording of the evidence. In the light of the directions issued by this Court while disposing of writ Petition NO. 5334 of 2005 the trial Court recorded the evidence and after considering the same reached the conclusion that the delay in filing of the appeal has not been satisfactorily explained.

It is concluded, on the appreciation of evidence, that delay was not occasioned on account of a sufficient cause and the petitioner is blamed as he was not diligent. It is this order passed by the First Appellate Court dated 28.6.2006, that is challenged in the present writ petition.

3. The First Appellate Court has appreciated the evidence on record and reached a conclusion that the petitioner has failed to established that there was sufficient cause for delay in filing the appeal. The First Appellate Court has held that the petitioner has failed to satisfactorily explain the delay of 529 days and thus rejected the application. The First Appellate Court has taken a possible view of the matter and that the same does not call for any interference by this Court under Article 227 of the Constitution of India.

4. In the result, the writ petition fails and the same is summarily dismissed.

(A.P. Deshpande, J.)